

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Leroy K. Wheeler,)	
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR RECONSIDERATION
vs.)	
)	
State of North Dakota, Tim Schuetzle, and)	
Leann K. Bertsch,)	
)	Case No. 1:07-cv-075
Defendants.)	
)	

Before the Court is the plaintiff's "Motion to Reconsider," filed on December 6, 2007. Wheeler seeks reconsideration of this Court's "Order Denying Motion for Protective Order" dated November 21, 2007. See Docket No. 4.

The Federal Rules of Civil Procedure do not mention motions for reconsideration. Broadway v. Norris, 193 F.3d 987, 989 (8th Cir. 1999); see also Schoffstall v. Henderson, 223 F.3d 818, 827 (8th Cir. 2000). The Eighth Circuit Court of Appeals has said that when a motion is directed at a non-final order, as is the case here, it should be construed as a Rule 60(b) motion. See Broadway, 193 F.3d 987, 989 ("By its terms, only Rule 60(b) encompasses a motion filed in response to an order.")

The Eighth Circuit has held that Rule 60(b) provides for "extraordinary relief which may be granted only upon an adequate showing of exceptional circumstances." United States v. Young, 806 F.2d 805, 806 (8th Cir. 1986). A court has broad discretion in ruling on a Rule 60(b) motion. Sellers v. Mineta, 350 F.3d 706, 716 (8th Cir. 2003). The rule "authorizes relief based on certain enumerated circumstances (for example, fraud, changed conditions, and the like)." Broadway v. Norris, 193 F.3d 987, 990 (8th Cir. 1999). It is not a vehicle for reargument on the merits. Id.

(denying relief under Rule 60(b) when the movant “did nothing more than reargue, somewhat more fully, the merits of their claim . . .”).

The Court has carefully reviewed the pending motion and finds that there is no justification for granting a Rule 60(b) motion for relief from the order. The Plaintiff’s Motion for Reconsideration is **DENIED**. (Docket No. 9).

IT IS SO ORDERED.

Dated this 7th day of December, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court